

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

NOV 16 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ORGAN WATER & SEWER ASSOCIATION,


CLERK

Plaintiff,

vs.

Civ. No. 01-883 BB/WWD

MOONGATE WATER COMPANY, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court as the result of certain discussion at the Initial Scheduling Conference, subsequent submissions to the Court and telephone conversations with counsel. I had planned to have counsel submit a proposed form of order which would be entered by the Honorable Bruce D. Black, the assigned trial judge in this cause; however, I have decided that it would be preferable to enter the order myself since I am more familiar with the circumstances involved. At the Initial Scheduling Conference counsel indicated that certain corrections or non-substantive changes needed to be made in the complaint, and in summary judgment pleadings filed by the Plaintiff. Since the proposed changes apparently would not require altered responses from the Defendant, I suggested that "substitute" pleadings be filed by the Plaintiff, and that no response other than responses already made would be necessary on the part of the Defendant. Counsel agreed to this approach and Plaintiff's counsel submitted a substituted complaint, a substituted motion for partial summary judgement, and a substituted brief in support of the motion for partial summary judgment. The proposed order submitted with the aforementioned pleadings recited that a motion had been made for a page extension of the supporting memorandum and then proceeded to give the relief of substituting various parts of the



memorandum and of the complaint. In short, there was a "disconnect" in the order between the relief sought and that which the order would grant; consequently, I am writing this memorandum opinion and order to accomplish what was agreed upon by counsel and the Court instead of relying on the form of order submitted by counsel. In trying to save some time in the case and some effort on the part of counsel I may have run afoul of the maxim "Let no good deed go unpunished", but I take responsibility for suggesting a somewhat novel approach. I should have suggested writing this opinion in the first place, and filing it with the substituted pleadings. Better late than never, I suppose.

WHEREFORE,

IT IS ORDERED that Plaintiff may file with the Court a "Substituted Complaint for Declaratory and Injunctive Relief, Damages, Constructive Trust, Unjust Enrichment, Forfeiture and Attorney Fees" as well as "Plaintiff's (Substituted) Motion for Partial Summary Judgment".

IT IS FURTHER ORDERED that Plaintiff may file with the Court the "Brief (Substituted) in Support of Plaintiff's Motion for Partial Summary Judgment", which consists of forty-seven (47) pages, as well as Exhibit 10 (Amended 10/31/01) which is appended to the Brief.

FINALLY, IT IS ORDERED that if the modifications made in Plaintiff's complaint and motion for partial summary judgment require a supplement to Defendant's responses to those pleadings, Defendant shall within 20 days of the entry of this Order seek leave of the Court to file such supplementary pleadings setting out the reasons requiring such supplementation.



UNITED STATES MAGISTRATE JUDGE